



Signed and Filed: August 2, 2022

*Dennis Montali*

DENNIS MONTALI  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re: ) Bankruptcy Case  
PG&E CORPORATION, ) No. 19-30088-DM  
 ) Chapter 11  
- and - ) Jointly Administered  
PACIFIC GAS AND ELECTRIC COMPANY, )  
Reorganized Debtors. )  
☐ Affects PG&E Corporation )  
☐ Affects Pacific Gas and )  
Electric Company )  
☒ Affects both Debtors )  
\* All papers shall be filed in )  
the Lead Case, No. 19-30088 (DM). )

**ORDER ON MOTION OF WILLIAM B. ABRAMS AUTHORIZING DISCOVERY  
REGARDING ADMINISTRATION OF THE FIRE VICTIM TRUST**

I. INTRODUCTION

The court has considered the *Motion of William B. Abrams Pursuant to Federal Rule of Bankruptcy Procedure 2004 for Entry of an Order Authorizing Discovery and Hearings Regarding the Administration of The Fire Victim Trust* (Dkt. 12440) ("Motion");

1 the *Objection of Fire Victim Trustee to Motion of William B.*  
2 *Abrams Pursuant to Federal Rule of Bankruptcy Procedure 2004 for*  
3 *Entry of an Order Authorizing Discovery and Hearings Regarding*  
4 *the Administration of The Fire Victim Trust* (Dkt. 12527)  
5 ("Objection"); the *William B. Abrams Reply to the Objection of*  
6 *Fire Victim Trustee Pursuant to Federal Rule of Bankruptcy*  
7 *Procedure 2004 for Entry of an Order Authorizing Discovery and*  
8 *Hearings Regarding the Administration of The Fire Victim Trust*  
9 (Dkt. 12593) ("Reply"); and the arguments of the parties  
10 presented at a hearing on June 7, 2022.

11 For the reasons explained below, the court will grant in  
12 part and deny in part the Motion by directing the Trustee to  
13 answer specific questions prompted by the Motion and the Reply,  
14 but now posed by the court, and to provide documents as  
15 directed.

## 16 II. BACKGROUND

17 As this court has stated before, the above-captioned  
18 bankruptcy cases were and are among the most complex in U.S.  
19 bankruptcy history, involving "difficult legal, financial,  
20 practical, and personal issues." (Dkt. 8005, p. 1). The cases  
21 were filed to manage a massive amount of damage claims stemming  
22 from devastating wildfires that occurred between 2015 and 2018,  
23 including the 2018 Camp fire, for which one of the Debtors has  
24 been held criminally liable.<sup>1</sup> On October 28, 2019, with the  
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27 <sup>1</sup> See Ivan Penn and Peter Eavis, *PG&E Pleads Guilty to 84*  
28 *Counts of Manslaughter in Camp Fire Case*, N.Y. TIMES (June 16,  
2020), <https://www.nytimes.com/2020/06/16/business/energy-environment/pge-camp-fire-california-wildfires.html>)

1 stakes heightened by the deadline set forth by Assembly Bill  
2 1054, the court entered an *Order Appointing Mediator* (Dkt.  
3 4499). Mediator Retired Bankruptcy Judge Randall J. Newsome  
4 conducted a lengthy mediation among the Debtors and various  
5 stakeholders, including the Tort Claimants Committee {"TCC"} and  
6 Consenting Fire Victim Professionals.

7 The mediation, combined with a multitude of contested  
8 hearings, culminated in the *Debtors' and Shareholder Proponents'*  
9 *Joint Chapter 11 Plan of Reorganization Dated June 19, 2020*  
10 ("Plan") (Dkt. 8048). The court confirmed the Plan on June 20,  
11 2020 (Dkt. 8053). A key component of the Plan is the Fire  
12 Victim Trust Agreement ("Trust Agreement") (Dkt. 8057) which  
13 established the Fire Victim Trust ("FVT") and Fire Victim Claims  
14 Resolution Procedures ("CRP"). The Trust Agreement approved the  
15 selection of Retired Justice John K. Trotter as the Trustee for  
16 the FVT and Cathy Yanni as Claims Administrator for the FVT,  
17 both of whom had been previously employed by the court (Dkt.  
18 6760) to aid in formulation of the claims resolutions procedures  
19 that would eventually become part of the Trust Agreement and  
20 CRP. The Trust Agreement also established the Fire Victim Trust  
21 Oversight Committee ("TOC"), consisting of members selected and  
22 appointed by the TCC and the Consenting Fire Claimants  
23 Professionals.

24 Pursuant to the Plan, the Debtors contributed to the FVT  
25 \$6.75 billion in cash and \$6.75 billion in the reorganized  
26 Debtors' common stock, which the Trustee and Claims  
27 Administrator manage and administer for the benefit of the fire  
28 victim claimants ("Beneficial Owners").

1 Now, over two years later, the value of the stock  
2 contributed to the FVT has not maintained the expected level the  
3 parties hoped for and the Plan contemplated. The resulting  
4 shortfall, combined with Trust administrative expenses and a  
5 lengthy and complicated distribution process for claimants, some  
6 of whom are fire victims who are years into this unfortunate  
7 situation without any recompense, has understandably led to  
8 questions regarding the management of the FVT. Justice Trotter  
9 has since retired from the position of Trustee, replaced by Ms.  
10 Yanni as of July 1, 2022. Both the former and current Trustee  
11 have maintained that the FVT has been as transparent with  
12 claimants, as the terms of the Trust Agreement dictate.

13 The Motion, supported by various letters to the court by  
14 other claimants, both individuals (e.g., Dkt. 12657) and  
15 counties alike (Dkts. 12609, 12670), indicates to this court  
16 that there should be more visibility in a process meant to  
17 protect those most damaged by the very events that sparked this  
18 bankruptcy.

19 It should not go unnoticed, and the court acknowledges,  
20 that the former Trustee and the present Trustee, and their  
21 professionals and support staff, have accomplished an impressive  
22 record of progress in the two years of the Trust. This has  
23 occurred in the midst of an unprecedented worldwide pandemic  
24 under trying circumstances. Billions of dollars have been paid  
25 from the Trust so far to tens of thousands Beneficial Owners;  
26 the review of highly complex claims asserting dozens of types of  
27 fact situations and theories of recovery as proceeded; the  
28 administration of a thoughtful and comprehensive claims review

1 and re-review process has been implemented and has worked  
2 apparently without many difficulties. In a perfect world there  
3 would have been no wildfires. Next to that, all of the claims  
4 would have been paid by now and the stock value would have  
5 soared. But this is not that fantasy situation. It is a real  
6 world tragedy being dealt with in a reasonable manner with  
7 impressive albeit imperfect results.

8 Despite the criticisms of Mr. Abrams and others, the  
9 progress has been impressive. In particular, the court notes  
10 the following from the Trustee's letter of June 21, 2022 (Dkt  
11 12527, pp 30-33): nearly \$10 Billion of claim Determination  
12 Notices issued (30,000 in number involving over 150,000 claims),  
13 resulting in payments of nearly \$4.5 Billion to Beneficial  
14 Owners, and representing a 45% recovery for those parties. Add  
15 to that almost \$900,000 in advances for 34,000 particular  
16 Beneficial Owners. These are very impressive results in just  
17 two years given all of the complications.

18 In that context, and with the recognition that things could  
19 be better, the court has concluded that some additional  
20 information, albeit minimal, is needed and should be required  
21 from the Trustee. This is not notwithstanding the Trustee's  
22 observation regarding Section 2.2(g) of the controlling  
23 provision of the Trust Agreement: "The Trustee has no obligation  
24 to provide, and the Beneficial Owners have no right to receive,  
25 information regarding the operation of the trust except as  
26 provided in the Annual Report."

1 III. AUTHORITY OF THE COURT AND FEDERAL RULE OF BANKRUPTCY  
2 PROCEDURE 2004

3 Article 1.6 of the Trust Agreement, entitled Jurisdiction,  
4 begins by reciting that this court "shall have exclusive  
5 jurisdiction with respect to any action relating to or arising  
6 out of the Trust. . . ." The last sentence of Article 1.6 makes  
7 clear that its provisions shall not affect, impair, alter,  
8 modify or supersede the procedures contained in the CRP, and  
9 nothing in this order purports to do that. Rather, this order  
10 simply facilitates a flow of information from the Trustee  
11 dealing with three specific matters of interest to all  
12 Beneficial Owners in order to clarify and expand upon the  
13 following three topics: trust oversight and litigation  
14 activities; lobbyist activities; and administrative and  
15 litigation expenses.

16 More specifically, Federal Rule of Bankruptcy Procedure  
17 2004 remains available as a vehicle for that exchange of  
18 information. The Trustee's Objection at page 17-18, not  
19 surprisingly argues that after confirmation of the Plan, that  
20 rule limits what can be disclosed. But the court cannot take  
21 seriously the Trustee's attempt to shut off access via Rule 2004  
22 when, as pointed out by Mr. Abrams, he has himself invoked that  
23 very rule when he sought discovery from Adventist Healthcare  
24 System/West et al. and PricewaterhouseCoopers LLP. See Abrams'  
25 Motion at page 10, citing Dkts. 11145 and 11556 in this court's  
26 order in Dkt. 11652: "While the CRP does not incorporate Rule  
27 2004, it does not exclude use of that rule either."

28 In any event, the court is satisfied that under its  
inherent powers, and particularly in light of the enormous

1 public interest in informing thousands of Beneficial Owners  
2 about specific aspects of the Trust, there is ample  
3 justification and authority for the court to direct the Trustee  
4 in the manner described below.

#### 5 IV. DISCUSSION

6 It is important to emphasize what is not fair game for Mr.  
7 Abrams to seek from this court, and what is not dealt with by  
8 this order. First, nothing is sought from the Trustee as to the  
9 disposition of any particular claim administered in the FVT nor  
10 the very complicated procedures promulgated via the CRP that  
11 deals with the valuation, and ultimately allowance or  
12 disallowance in whole or part of any particular claim. Further,  
13 there is nothing about the Trustee's receipt of the cash  
14 contributed to the Trust by the Reorganized Debtor under the  
15 Plan, nor the original or present value of the stock  
16 consideration, including the Trustee's management and control  
17 over that stock.

18 Also excluded are any inquiries that predate the effective  
19 date of the Plan and the Trust (July 1, 2020) such as the events  
20 that predated the California Legislature's enactment of AB1054;  
21 the conduct or composition of the TCC and the Consenting Fire  
22 Claims Professionals.

23 Also excluded is any examination or discussion of the  
24 circumstances that permitted a small number of fire victim  
25 claimants to have access to judicial review of their situation  
26 after the administration of their claims by the Trustee, to the  
27 exclusion of such access by the vast majority of fire claimants.

1       What is preserved for examination pursuant to this order  
2 are the following three discrete areas identified by Mr. Abrams  
3 as the trust oversight and litigation activities; lobbyist  
4 activities; and administration and litigation expenses.

5       Mr. Abrams' Motion sets forth several pages of forms drawn  
6 from interrogatories and requests for information that include  
7 numerous definitions, lengthy instructions, a detailed section  
8 entitled Manner of Production, and then thirteen enumerated  
9 requests for information and nine enumerated requests for  
10 production.

11       The court believes such a comprehensive sweeping and broad  
12 form of request of discovery is inappropriate for a variety of  
13 reasons, not the least of which is that Mr. Abrams is really  
14 acting on his own behalf and is not empowered to act on behalf  
15 of other fire victims. Further, Mr. Abrams is not some sort of  
16 ombudsman or would-be inspector general, entitled to oversee and  
17 second guess the activities of the Trustee. The fire victims  
18 overwhelmingly voted to accept the Plan and all of what  
19 followed, viz., an independent trust charged with administering  
20 the fund for its Beneficial Owners, with very little  
21 interference or oversight from others, including this court.  
22 The Trust and the broad authority of the Trustee was not  
23 designed or conceived to be micro-managed or second-guessed by  
24 third parties.

25       In addition, while the court is willing to require the  
26 Trustee to provide some specific responses and particular  
27 documents, it will not pretend that it would be appropriate to  
28 mirror the type of discovery that is common for extremely



1 complex and far-reaching discovery. Thus, Mr. Abrams multi-page  
2 discovery request will be replaced by the court's own direction  
3 to the Trustee to provide discrete responses and specific  
4 documents.

5 V. REQUIRED RESPONSES BY THE TRUSTEE

6 No later than September 6, 2022, the Trustee is to file  
7 written responses to the following questions and to post on the  
8 FVT website, and file with the court, copies of the relevant  
9 documents referred to below.

10 A. **Questions regarding Lobbying Activities.**

- 11 1. Explain why the Trustee did not use the "request for  
12 proposal" procedure as utilized in the selection of  
13 professionals to prosecute the assigned claims.
- 14 2. Identify the firm retained by the Trustee for lobbying  
15 activities for fiscal year 2022 and explain how that  
16 firm was selected, whether there was any competitive  
17 open and public request for proposal or similar  
18 procedure implemented.
- 19 3. Identify any firm or person retained for lobbying  
20 activities for fiscal year 2021, even though the Trust  
21 had reported that it incurred no such lobbying  
22 expenses during that year. Explain how that firm or  
23 person was selected, whether there was any competitive  
24 open and public request for proposal or similar  
25 procedure implemented.
- 26 4. Provide a list of bills or legislative hearings where  
27 the Trustee's designated lobbyist gave testimony or  
28 engaged in efforts to further the interest of PG&E

1 fire victims, specifically explaining how those  
2 activities furthered the efforts on behalf of those  
3 victims.

4 **B. Questions regarding Selection of Professionals.**

5 In the Objection, the Trustee stated as follows:

6 "The Trust retained all of its third-party  
7 litigation firms through an open and  
8 public 'request for proposal' interview  
9 process."<sup>2</sup> (Dkt. 12527, at 19:23-24)

- 10 1. Identify the particulars of that "request for  
11 proposal", including when and to who it promulgated,  
12 what responses were received and from whom; and the  
13 name of each counsel or firm selected by the Trustee  
14 and subsequently retained.
- 15 2. For every such counsel so retained, post a copy of the  
16 retention agreement pertaining to that counsel.
- 17 3. Identify specifically any such contracts awarded to  
18 any member of the TOC.

19 **C. Questions regarding Status of Assigned Claims<sup>3</sup>.**

20 Generally, the Assigned Claims fall into three categories:  
21 suits against third parties who contracted with Debtors to  
22 perform vegetative management; claims against large  
23 institutional third parties; and claims (limited to insurance  
24 policy limits) against former officers and directors of Debtors.

25 The court appreciates the need for confidentiality that  
26 would seem necessary to protect the interests of the Trust and

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27 <sup>2</sup> The Trustee repeated his description of this "proposal and  
28 interview" process in his June 21, 2022 letter.

<sup>3</sup> See Plan, Section 1.8, defining Assigned Rights and Causes of  
Action ("Assigned Claims").

1 would likely aid potential defendants if disclosed. For that  
2 reason, the court will limit the extent of what the Trustee must  
3 disclose about any of the Assigned Claims.

4 1. Identify any Assigned Claim that has been finally  
5 resolved by judgment, arbitration, mediation or  
6 otherwise. Name the party, a brief summary of the  
7 outcome, the gross amount of realized, the cost in  
8 attorneys' fees and expenses of the effort, and the  
9 net result of the benefit to the Trust.

10 2. For any such completed matter, the Trustee should post  
11 on the FVT website any agreement, order, or other  
12 document memorializing the outcome. If the Trustee  
13 believes any provision must or should be kept  
14 confidential, he should file a request with the court  
15 to permit the filing of a redacted version of such a  
16 document and the court will review the unredacted  
17 version *in camera* and issue an appropriate order.

18 VI. CONCLUSION

19 For the reasons explained above, the Motion is GRANTED, in  
20 part, and DENIED, in part.

21  
22 **\*\*END OF ORDER\*\***  
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